

MICHIGAN PROBATE JUDGES ASSOCIATION

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Ladies and gentlemen, I am Judge Elwood Brown from St. Clair County and the current president of the Michigan Probate Judges Association. Thank you for allowing me to address you today concerning HB 4646 and HB 4659 specifically.

HB4646 of course would provide for the ability of adoption attorneys and adoption agencies to take out of court consents from a birth parent or parents for the purpose of a direct placement adoption. We recognize that many states do allow for this already and in fact in Michigan there is a provision for this relating to parents who are in prison or the military.

Although we do have some general concerns with the removal of this process from judicial oversight in that there is no real mechanism to insure that the consent is given knowingly and voluntarily, we are more concerned with some of the particulars of the proposed bill.

1. We are concerned with the ability of the adoption attorney or adoption agency to take the consent in less than 24 hours after birth simply by indicating that there are exigent circumstances.

There is no mechanism to review or challenge the determination of exigent circumstances unless the birth parent files a petition to revoke the consent. About the only exigent circumstance that would justify this is if the birth parent insisted on leaving the hospital before the 24 hour period.

If the mother received any drugs to assist in the delivery there is a question as to whether any consent given before the effect of those drugs have worn off would be voluntary and knowingly given.

2. Although we realize that the language providing for an out of court release requires the adoption attorney or adoption agency to advise the parent of her legal rights we are concerned as to the lack of an indication of what this language refers to and whether an adoption agency in particular is understanding as to what rights this language refers to. Additionally if this language is referring solely to the persons rights as a parent there is no provision in the proposed language requiring that the parent who is releasing their parental rights to be advised that they have 5 days exclusive of holidays and weekends to file a petition to revoke the release.

Advice as to the right to file such a petition and the time limits involved should be required. Not only is this necessary for a full indication to the parent of her or his rights but the lack of such advice could not then be used as a basis to appeal a denial of a request to revoke.

3. When a petition is filed to revoke the proposed factors to be considered by the court appear to be stacked in favor of the adopting parent.

With relation to an unemancipated minor we completely understand and agree with the requirement that the minor's parent or guardian join in the consent to release. What we take issue with is the requirement that the minor's parent join in the petition to revoke.

The minor parent can be expected to be under significant pressure from various persons to give her child up for adoption including from the child's father and it is not without some degree of probability that she would receive similar pressure from her own parent or guardian.

Requiring that same parent or guardian to also join in a petition to revoke consent may result in a denial of the minor parent's right to have the issue addressed.

(Appears in section 29 (12) and elsewhere)

The additional requirement that the court must initially consider whether the parent seeking to revoke is fit and immediately able to properly care for the child is another strike against an unemancipated minor for very few if any minors are equipped to provide for their child entirely on their own and must rely upon family for support. There needs to be recognition of this reality if there is to be a meaningful hearing for these young people.

(Appears in section 29 (14) and elsewhere)

The factor (A) in section 29 (14) that the court consider the length of time before executing the consent that the parent or guardian seeking revocation has manifested to the adoption attorney or the child placing agency an intent to place the child for adoption is a factor that will be found in every direct placement adoption and will normally weigh against the birth parent.

The judge will be fully aware that the court would not be addressing this issue if the parent had not at some point manifested an intent to release their child for adoption. What is more important than the length of time of this manifestation is any stated reasons for making the decision.

Whether the parent indicated a desire six days ago or six months ago should not be relevant to their desire to change their mind but what are relevant are any stated reasons for doing so.

The factor (B) will really have very little weight if any because there can only be a maximum of 5 days to consider. What real difference does it make if the parent immediately petitioned to revoke or waited until the 5th day to do so?

The factor (E) that requires a court to compare the abilities of a parent and a prospective adoptive parent to provide for a child is in most cases a factor that will favor the adoptive parent. This factor will require the court to add weight to its consideration based on the economic status of the parties. This is wrong.

I would point out that before the court even gets to this stage there has had to have been a finding that the parent seeking revocation is fit and immediately able to provide for the child.

Adding this additional factor simply serves the adopting parent.

HB 4659 would create what is referred to the "Responsible Father Registry" the MPJA is concerned with the protections of the rights of fathers in their constitutionally recognized right to know and associate and to raise or assist in the raising of their children.

To be sure, we recognize that there are fathers who do not step up and accept their responsibility as a father to their children. But there are those who do. In order to separate the two it is important to preserve both of their due process rights to notice that their children even exist before acting to terminate a father's interest in a child the father may be totally unaware of.

Simply because a mother gets pregnant and gives birth does not mean that she has ever told the father of the child that she is pregnant or has given birth. In fact in many instances the birth mother will lie as to the identity of the father of her child. This was exactly what occurred in the case of In re Clausen better known as the baby Jessica case from the early 1990's that I referenced in our earlier communication to this committee. In that case the mother lied and said that a different man was the father of the child. Both the mother and the person she identified released their parental rights and the child was placed with a Michigan couple for adoption. Subsequently the mother admitted that she had lied as to this identity and the real father upon discovering that he was the father sought custody of his child.

We recognize that the responsible father registry only applies to putative fathers and that a father who has established his paternity is not required to register.

There are 2 provisions in the Bill that we are particularly concerned about. The first is section 2892A (3) that provides that a man waives his right to receive notice he is otherwise entitled to if he fails to register and then provides that this applies unless the man was led to believe through the birth mother's fraud that the pregnancy was terminated or the mother miscarried when in fact the baby was born or that the child died when in fact the child is alive. In that case the man must register within 5 days after discovering the fraud described.

These exceptions presume that the father has knowledge of the fraud in that the child was actually born and is alive.

If the mother has already misrepresented to him this status why would anyone think that she would tell him of the birth?

Additionally what if the father was actually told by the mother that he was not the father of the child?

The other provision that we are concerned about is Section 2892A (5) that creates an irrefutable presumption that a man who has sexual intercourse with a woman is on

notice that he could be a father and must register after that intercourse regardless of whether or not a pregnancy actually occurred or risk losing his parental rights to the child if the mother decides to give the child up for adoption.

We recognize that there is a provision that indicates that if the identity and the whereabouts of the putative father or alleged father are reasonably ascertainable, written notice of the mother's intended release and the availability of registration must be given the putative father.

Our concern is first: what is meant by reasonably ascertainable as to not only the identity but also the whereabouts of the father? How much effort is required to locate the father in order to give him this notice is not stated or is it enough for a perfunctory statement by the mother that she doesn't know where he is and with no effort to locate simply mail it to his last known address?

Second: who decides if the father's identity and whereabouts is or is not reasonably ascertainable?

Because of the practical effect of this proposed statute together with the ability to take out of court consents, none of these requirements will be tested by court process and will become an issue when a father wants to challenge and is able to prove that the mother knew full well not only his identity but how to reasonably give him notice. What happens to an adoption then if this statutory requirement was not complied with?

Notice is the very essence of due process and cutting the court out of the role of oversight at these critical stages relative to the rights of parents creates a potential for problems with the intent to provide permanency for these children. The statute should at the very least provide more specificity as to what is required to insure that reasonable efforts are made toward giving actual notice.

Thank you for allowing me the opportunity to share with you our concerns. I would be happy to answer any questions that you may have.